IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29 .01.2007

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR

C.M.A.NO.302 OF 2001

The Managing Director,
Metropolitan Transport
Corporation Ltd.,
Ayyanavaram, Chennai-600 023. … Appellant/Respondent
(Formerly known as Dr. Ambedkar
Transport Corporation Ltd.,)

Vs.

1. Raji @ G.Mannar Mannan ... Respondent/Petitioner
2.P.Patturaji
3.The Branch Manager,
United India Insurance Co. Ltd.,
Chennai-1.
R2 given up Exparte in Lower Court … Respondent/ Respondent

The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the award & Decree dated 09.05.2001 made in M.C.O.P.No.5 of 2000 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Nagapattinam.

For Appellant : Mr.S.Ramachandran

For 1st Respondent : Mr.M.Jayapal Raja

For 3rd Respondent : Mr.T.D.Vasu

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JUDGMENT

Aggrieved by an order dated 09.05.2001 passed in M.C.O.P.No.5 of 2000 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Nagapattinam, the Transport Corporation has preferred this appeal.

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2. Brief facts leading to the appeal are as follows: On 11.08.1998 at 7.00 p.m., when the first respondent/claimant along with his relative by name Josi was travelling in an Auto-Rickshaw bearing Registration No.TN.49-04-E-0226, owned by the second respondent and insured with the third respondent, the bus owned by the appellant-Transport Corporation came from the opposite direction in a rash and negligent manner and dashed against the said Auto-rickshaw. The first respondent/claimant sustained injury in the spinal cord and fracture in both legs in the accident. A case in Cr.NO.561 of 1998 was registered against the driver of the bus in Manali Police Station.

3. The appellant-Transport Corporation admitted the accident, but contended that the accident did not occur due to the negligence on the part of the driver of the bus. They further contended that when the bus was proceeding in Thiruvotriyur high road near Rajesh Engineering Company, an Auto-rickshaw bearing Registration NO.TN04-E-0226 came in the opposite direction at a high speed and dashed against the front right side of the bus. They submitted that since the accident occurred only due to the negligence of the driver of the Auto-rickshaw, they are not liable to pay compensation.

4. Before the Tribunal, the first respondent/claimant examined himself as PW.1 and PW.2 is the Doctor, who examined the respondent/claimant with reference to medical records. PW.3 is the employer of the first respondent/claimant and one Thiru.Rasel Raj was examined as PW.4. Exs.P1 to P40 were marked on behalf of the first respondent/claimant. On behalf of the appellant-Transport Corporation, the driver of the bus was examined as RW.1 and rough sketch was marked as Ex.B1.

5. The Tribunal, on evaluation of pleadings and evidence, found that the driver of the appellant-Transport Corporation bus was responsible for the accident and awarded compensation of Rs.9,91,768/- with interest at the rate of 12% per annum from the date of claim till the date of realization.

6. Heard, Mr.S.Ramachandran, learned counsel for the appellant, Mr.M.Jayapal Raja, learned counsel for the first respondent and Mr.T.D.Vasu, learned counsel for the third respondent.

7. Learned counsel for the appellant submitted that the Tribunal has failed to appreciate the evidence of RW.1, driver of the bus. It erred in relying on Ex.P1, First Information Report, in the absence of examination of the complainant. He further submitted that the negligence of driver of the Auto-rickshaw has

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contributed to the accident as he came from the opposite direction at high speed and dashed on the front side of the bus.

8. PW.1 claimant has deposed that on 11.08.1998 at about 7.00 p.m., when he was traveling in an Auto-rickshaw, after Vaikadu bridge in the Thiruvottiyur-Ponneri High Road, the bus owned by the appellant-Transport Corporation came from the opposite direction, dashed against the Auto-rickshaw. Ex.P1 is the copy of the First Information Report and Ex.P5 is the charge sheet filed against the driver of the bus. PW.1, claimant has denied specifically the suggestion that there was negligence on the part of the Auto-rickshaw driver.

9. In Ex.P1, First Information Report, the Auto-rickshaw driver/complainant stated that on 11.08.1998 about 7.00 p.m., the first respondent/claimant along with his relative Josi travelled in his auto-rickshaw from Thiruvottiyur bus stand to Manali. After Vaikadu Bridge, the appellant-Transport Corporation's bus came from the opposite side in a rash and negligent manner and dashed against the auto-rickshaw. The first respondent/claimant sustained injuries in the accident.

10. RW.1, the driver of the bus, has deposed that he started the bus from Meenjur about 6.30 p.m and while he was proceeding towards High Court, near Vaikadu Rajesh Engineering Company, the second respondent's autorickshaw came from the opposite direction at a high speed. He stopped the bus on seeing the speeding Auto-rickshaw, but the Auto-rickshaw dashed against the bus. He further deposed that the driver of the Auto-rickshaw alone was responsible for the accident. During cross-examination, he deposed that before the place of occurrence, there was a bus stop and when he started the bus from the bus stop, the Auto-rickshaw came in the opposite direction and dashed against the bus. But no trip sheet produced to prove that there was a bus stop near the place of accident. Ex.B1, Rough sketch marked by the appellant-Transport Corporation, does not indicate that there was a bus stop near the place of accident. Whereas, it is clear from Ex.P5, Rough plan attached to Charge sheet that while the Auto-rickshaw was passing through the bridge, the bus came from the opposite direction and dashed against the auto in the middle of the road.

11. The oral testimony of the respondent/claimant is corroborated by Ex.P1, First Information Report and Ex.P5, Charge sheet filed against the driver of the bus. The Tribunal has properly evaluated the evidence let in by both parties and found that the driver of the bus alone was responsible for the accident. It is settled law that in Claims cases, the Tribunal has to consider the preponderance of possibility with regard to the manner of accident and strict proof of evidence is not required for

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determining negligence. In the instant case, the finding of the Tribunal as regards negligence cannot be termed as perverse and does not warrant interference. Therefore, it is confirmed.

12. Learned counsel for the appellant submitted that the compensation awarded by the Tribunal is excessive. He further submitted that the permanent disability assessed by the Doctor at 100% is on the higher side. He also submitted that the Tribunal has erred in awarding Rs.4,50,000/- towards loss of earning capacity, without deducting 1/3rd towards personal expenses.

13. Placing reliance on the decision of the Full Bench of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others [2006 (4) CTC 433], learned counsel for the appellant submitted that the Tribunal has awarded compensation for permanent disability and also for loss of earning capacity. Therefore, the compensation for permanent disability is liable to be deducted. He further submitted that the compensation of Rs.3,96,738/- for medical expenses is excessive and in particular, the amount of Rs.8,500/- granted for medical expenses as per Ex.P11 is liable to be deducted.

14. PW.1, claimant has deposed that in the accident, he sustained injury in the spinal cord and thigh. He was treated as inpatient in the Government Hospital, Chennai between 11.08.1998 and 14.08.1998. Thereafter, he was treated as inpatient in Guest Hospital, Poonamalle from 14.08.1998 to 25.08.1998. In Ex.P6, Discharge summary, the diagnosis was mentioned as "burst fracture, with total paraplegia, fracture of 9th and 10th ribs in the left side, bilateral hemothorax right and left". He was also treated as inpatient in Miot Hospital and a surgery was performed to fix the plates and screws to fuse the bones. He further deposed that he underwent further treatment in some other hospitals, but no evidence was produced to substantiate the same.

15. PW.2, Doctor who examined the first respondent/claimant on 21.08.2000 with reference to medical records, deposed that the respondent/claimant sustained fracture on the Thoracic bone (10th and 11th) and injury on the spinal cord. He further deposed that 9th and 10th ribs on the left side and 7 to 10 ribs on the right side were also fractured. PW.1, claimant has deposed that during the period of trial, he was treated as out-patient. He has no sensation below the chest and he is not able to stand or walk, not able to do any work without the assistance of others. Both his legs have shrunk and that there is reduction of right leg to an extent of 5 cms and he is not able to move without a wheel chair. He could not sit for a long time and requires attendants even to go to the Toilet. He has further deposed that he is unable to pass

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urine in the normal way and using tube to pass. His marriage prospects is affected.

16. P.W.2, Doctor has deposed that there is mal-union of fractured ribs and due to the injury in the spinal cord, there is no sensation below the hip and both the legs were not in use. He further deposed that the first respondent/claimant is having only touching sensation below hip and he needs assistance for his day-to-day work. Exs.A35 and A36 are X-ray series. Exs.P32 to P34, C.T. Scan reports were produced by the respondent/claimant. In fine, he deposed that there is no possibility of the first respondent/claimant to stand or walk in future. He assessed the disability at 100% and issued Ex.P35, Disability Certificate.

17. The first respondent/claimant claimed that he was aged about 21 years and working as a Technical Manager in a Private Company, earning Rs.8,000/- per month. PW.3, employer of the first respondent/claimant, produced Ex.P37, Salary certificate to substantiate the claim. Further, he also produced vouchers for the months from May 1998 to August 1998. The Tribunal, on the basis of the Salary certificate and oral evidence of PW.2, rightly concluded that the first respondent/claimant has become permanently disabled and has lost his earning capacity.

18. There is no dispute with regard to the age of the first respondent/claimant. In so far as, monthly income of the first respondent/claimant is concerned, PW.3 has produced vouchers for the months from May'1998 to August' 1998 and Ex.P37, Salary certificate. Nowhere, it is mentioned in Exs.P37 to P40, that the first respondent/claimant was working as a Technical Manager. The Tribunal rejected those documents filed in support of his claim regarding income. However, accepted Ex.P33, National Trade Certificate issued by Ramajayathammal Memorial ITI, Mannargudi to the first respondent/claimant for the Trade "Mechanic Diesel" in the year 1991. The Tribunal, considering the Trade Certificate issued in the year 1991, determined the monthly income of the first respondent/claimant at Rs.2,500/-. Following the decisions in General Manager, Kerala State Transport Corporation v. Soosamma Thomas [1994 ACJ 1] and U.P.State Transport Corporation and others v. Trilok Chandra and others [1996 ACJ 831], the Tribunal rightly applied the multiplier of '15' multiplier and awarded compensation of Rs.4,50,000/- for loss of earning capacity. The application of '15' as multiplier has not been questioned.

19. The Supreme Court in a catena of decisions has held that the Second Schedule to Section 163-A of the Motor Vehicles Act, 1988 can be taken as guidance and not mere ready reckoner for computing compensation. The schedule provided under the Act is a

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ready reckoner for granting compensation to the third parties or legal representatives of the deceased. In so far as computation of compensation for non-fatal cases is concerned, apart from loss of future income, the injured is entitled to other pecuniary and non-pecuniary loss.

20. Clause 5 of the Schedule deals with the compensation in respect of disability in non-fatal accident. Following compensation shall be payable in case of disability to the victim in non-fatal accidents:

"loss of income, if any, for the actual period of disablement, not exceeding 52 weeks.

Plus either of the following

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above."

21. Though the Second Schedule to Section 163-A does not contemplate 1/3 deduction towards personal expenses, while computing compensation for loss of earning capacity. The Supreme Court in New India Assurance Co. Ltd., vs. Charlie and another, reported in 2005 (10) SCC 720, held that, the principle applicable to victim of fatal accident to be applied to a case where there is 100% disability due to injuries. The Apex Court held that that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand, the loss to the claimant of the future pecuniary benefit and on the other, any pecuniary advantage which from whatever source comes to them by reason of death, that is balance of loss and gain to a dependent by the death, must be asserted. Therefore, the Supreme Court deducted 1/3 towards personal expenses, while awarding compensation towards loss of future income. The same method has also been applied by the Division Bench of this Court in United India Insurance Ltd. vs. Veluchamy and another [2005 (1) CTC 38]. Therefore, the same method has to be applied for the purpose of computing compensation towards loss of future income. In the instant case, the Tribunal has calculated the loss of future income as Rs.4,50,000/-, without deducting 1/3rd towards his personal expenses. Applying the above principle laid down by the Supreme Court as well as this Court, the compensation works to Rs.3,00,000/- for loss of earning capacity.

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21. The Full Bench of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others [2006 (4) CTC 433], has held that when the loss of earning capacity is compensated, the permanent disability need not be itemized separately. In the instant case, the first respondent/claimant is compensated for the loss of earning capacity, apart from the disability compensation. Following the Full Bench judgment, the disability compensation of Rs.1 lakh is liable to be deducted from the total award.

22. There is categorical medical evidence that the first respondent/claimant has lost his amenities and that he is dependent on others. It is also evident that he has lost his marriage prospects completely and he has to be suitably compensated. The respondent/claimant may have to undergo the mental agony, frustration, loss of happiness, etc., for the rest of his life. Considering all these factors, this Court deems it fit to award compensation of Rs.25,000/- for loss of amenities, Rs.15,000/- for loss of marriage prospects and Rs.20,000/- for mental agony, frustration, loss of happiness etc.

23. Though a claim of Rs.28,000/- has been made for attendant's charges, the Tribunal has not awarded any compensation under this head. The first respondent/claimant deposed that he is not able to pass urine in the normal way and he is passing through tube. PW.2 Doctor has deposed that there is no possibility for the first respondent/claimant to stand or walk in future. He needs assistance to do his day-to-day work and cannot move without wheel chair. He further deposed that there is no chance for the first respondent/claimant to get cured completely. Considering the above circumstances, certainly the first respondent/claimant requires the assistance from others. Therefore, it is appropriate to award Rs.20,000/- towards attendant's charges.

24. It is evident from Ex.P11, medical bill that there is a calculation mistake. The expenses incurred is only Rs.850/-, whereas the Tribunal has awarded Rs.8,500/-. Therefore, Rs.7,650/- is liable to be deducted from the compensation awarded towards medical expenses and the same is deducted. The award in respect of other heads remain unaltered. The accident had occurred in the year 1998. Considering the nature of injuries, disabilities suffered by the first respondent/claimant, the interest rate remains unaltered.

25. In view of the above, the first respondent/claimant would be entitled to compensation of Rs.8,14,118/- with interest at the rate of 12% per annum from the date of claim till the date of realization. The apportionment of the award amount is given below:

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Loss of earning capacity	:	Rs. 3,00,000/-
Loss of amenities	:	Rs. 25,000/-
Loss of marital prospects	:	Rs. 15,000/-
Mental agony	:	Rs. 20,000/-
Attendant's charge	:	Rs. 20,000/-
Pain and suffering	:	Rs. 25,000/-
Medical expenses	:	Rs. 3,89,118/-
Transportation	:	Rs. 10,000/-
Extra nourishment	:	Rs. 10,000/-
		Rs.8,14,118/-

The Tribunal is directed to refund the balance amount with proportionate accrued interest to the appellant Transport Corporation within two months from the date of receipt of a copy of this order.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

skm

To

1. The Motor Accident Claims Tribunal,
(Additional District Judge), Nagapattinam.
(With records if any)

2. The Record keeper,
VR Section,
High Court, Madras.

1 cc to Mr.V.s. Ramesh Kumar, Advocate, sr. 6069
1 cc to Mr.s. Ramachandran, Advocate, sr. 5197

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